

25 m
6/5/01*se at*

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAMSON OMOSEFUNMI,
Plaintiff

:

:

vs.

:

CIVIL ACTION NO. 1:CV-00-2228

:

YORK COUNTY PRISON, et al.,
Defendants

:

O R D E R

FILED
HARRISBURG, PA

JUN 04 2001

MARY E. DIANDREA, CLERK
PER *9/8* DEPUTY CLERK

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The pro se plaintiff, Samson Omosefunmi, has filed a motion for appointment of counsel. This civil rights action alleges that the defendants violated the plaintiff's Eighth Amendment rights by use of excessive force and by failing to treat a medical condition.

This is a civil action, not a criminal one. Hence, the plaintiff has no right to appointed counsel. Rather, appointment of counsel is discretionary with the court and is governed by 28 U.S.C. § 1915(e)(1) which provides that the court "may request an attorney to represent any person unable to afford counsel."

In appointing counsel, the Third Circuit has stated that the court should consider the following factors, among others: (1) whether the claim has arguable merit in fact and law; (2) the plaintiff's ability to present his case; (3) the difficulty of the particular legal issues; (4) the degree to which factual

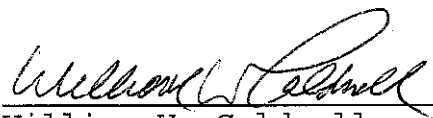
investigation will be required; (5) the ability of the indigent plaintiff to pursue the investigation; and (6) the effort made to retain an attorney before asking the court to appoint one. See Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993).

We decline to appoint counsel at this time. The most important factor is the plaintiff's effort to obtain counsel on his own. This type of claim is normally handled by private counsel, and the plaintiff has not informed us of the efforts he made, if any, to obtain a lawyer. Additionally, the case does not appear factually or legally difficult.

We also advise the plaintiff of the limited authority that section 1915(e)(1) confers on us. We cannot compel a lawyer to represent him nor do we have funds to pay an attorney who may accept appointment (although attorney's fees are available under 42 U.S.C. § 1988 for any lawyer who represents him if the plaintiff becomes a "prevailing party" in this litigation). Plaintiff should contact private counsel or his local legal aid society for assistance.

Accordingly, this 4th day of June, 2001, it is ordered that

1. The plaintiff's motion for appointment of counsel (doc. 22) is denied.


William W. Caldwell
United States District Judge

06/04/01 10:05 PAA 3102010000

USDC MDA Clerks Office

06/04/01

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

June 4, 2001

Re: 1:00-cv-02228 Omosefunmi v. York County Prison

True and correct copies of the attached were mailed by the clerk
to the following:

Samson Omosefunmi
Buffalo Federal Detention Facility
026864117
4250 Federal Drive
Batavia, NY 14020

Donald L. Reinhart, Esq.
The Law Offices of Donald Reihart
2600 Eastern Boulevard
Suite 204
York, PA 17402

Jacqueline M. Carolan, Esq.
Fox, Rothschild, O'Brien & Frankel
2000 Market Street, 10th Floor
Philadelphia, PA 19103

cc:

Judge ()
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Ct Reporter ()
Ctroom Deputy ()
Orig-Security ()
Federal Public Defender ()
Summons Issued ()

() Pro Se Law Clerk
() INS
() Jury Clerk

Standard Order 93-5 ()
Order to Show Cause ()

with N/C attached to complt. and served by:
U.S. Marshal () Pltf's Attorney ()

with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()

06/04/01 13:09 FAX 5702075650

USDC MDPA Clerks Office

027

Bankruptcy Court ()
Other _____ ()

MARY E. D'ANDREA, Clerk

DATE: 6-4-01

BY: 
Deputy Clerk